

FACT SHEET:

Pregnancy discrimination

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person on the basis of pregnancy.

What is pregnancy discrimination?

It is unlawful to discriminate against someone because they:

- are pregnant; or
- have been pregnant; or
- are presumed to be pregnant.

It includes a characteristic that is usually associated with pregnancy, for example, taking maternity leave.

Some women experience discrimination because of potential pregnancy, for example, not being considered for a position because they might become pregnant. This may be sex discrimination – that is, the potential to become pregnant may be considered to be a characteristic of being female.

Discrimination can be direct or indirect. Direct discrimination is treating a person less favourably because they are pregnant than someone who is not pregnant, in similar circumstances.

For example, an employee losing their job after informing their boss they were pregnant.

Indirect discrimination may be less obvious. Sometimes a rule or policy seems to treat everyone the same, but in fact, some people end up being treated less favourably. Indirect discrimination happens when there is an unreasonable requirement that people with a certain attribute (or characteristic) would have difficulty complying with, compared to others without that attribute.

For example, a workplace dress code or uniform that is difficult for a pregnant woman to wear.

It is also unlawful to discriminate against a person because of their association with a person identified on the basis of their pregnancy - such as a friend, family member or co-worker.

For example, a woman and her partner work for the same employer. When the woman becomes pregnant both the woman and her partner are dismissed.

It doesn't matter if the person doesn't mean to discriminate, or whether they think they are being discriminatory or not. It also doesn't matter if their beliefs or assumptions about the person or people they are discriminating against are correct or not. Under the Act, someone's motive for discriminating is irrelevant.

If you have experienced any of these types of discrimination, you may be able to lodge a complaint with us at the Commission.

However, not all treatment that might seem unfair is unlawful under the Act (see the exemptions below).

Generally it is against the law for employers to ask job applicants about their pregnancy or childbearing intentions as part of the recruitment process. If asked this question in a job interview or as part of an application, you do not have to respond unless there is a non-discriminatory reason for the information. It may be possible to make a complaint about being asked for unnecessary information.

When and where is pregnancy discrimination unlawful?

Pregnancy discrimination is unlawful in all aspects of work, including recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

It is also unlawful when a person is:

- a customer in a shop or restaurant;
- a student at school or university (if it is by the educator);
- looking for accommodation;
- applying for credit, insurance or a loan; or
- when dealing with tradespeople, businesses or State or local government.

Examples of pregnancy discrimination

A year 11 high school student had an unplanned pregnancy, but wanted to complete her schooling. When the school heard that she was pregnant, the principal asked her to leave school for the sake of the school's reputation.

A woman working at a fast food outlet was required to wear a uniform as were other staff. She was advised that she would have to finish up when she could no longer fit into the uniform because it wasn't nice for customers to be served by a pregnant woman, and the employer did not want to go to the expense of getting special uniforms, or adapting them for her.

When and where is different treatment okay?

Not all treatment that might seem unfair is against the law. The Act lists some exemptions that allow conduct that would otherwise be discriminatory. Whether or not an exemption applies will depend on individual circumstances.

Health and safety: A person may do an act that is reasonably necessary to protect public health or to protect the health and safety of people at a workplace. This could include not employing or dismissing a pregnant woman.

For example, a woman was unable to continue to work at an animal refuge when she became pregnant because she would come in contact with cats and cat faeces, and the whole of the refuge was a high risk for toxoplasmosis infection, which was an unacceptable health hazard for the woman and her unborn child.